

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

ZURICH AMERICAN INSURANCE  
COMPANY

*Plaintiff,*

V.

JOHNSON ROOFING AND BOEN  
PLUMBING COMPANY

*Defendant.*

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Civil Action No. 6:18 cv 00153

## PLAINTIFF'S ORIGINAL COMPLAINT

**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES Zurich American Insurance Company ("Plaintiff"), complaining of and about Johnson Roofing Company and Boen Plumbing Company ("Defendants"), and for cause of action shows the court the following:

## I.

## JURISDICTION AND VENUE

1. Jurisdiction in this case is proper under 28 USC Sec. 2201 and 1332. There is complete diversity between the parties and Plaintiff seeks monetary relief in excess of \$75,000. Venue is proper in this judicial district pursuant to 28 U.S.C. Sec 1391(b)-(d) because Defendants are subject to the personal jurisdiction of this Court and both Defendants reside in this district. Additionally, a substantial portion of the events giving rise to this claim took place in Waco Texas.

## II.

### PARTIES

2. Plaintiff Zurich American Insurance Company (“Plaintiff” or “Zurich”) is a New York corporation with statutory headquarters in New York and its principal place of business in Schaumburg Illinois and is authorized to do business in Texas.

3. Defendant Johnson Roofing is a Texas corporation headquartered at 574 Youngblood Rd. Robinson TX. 76706. Johnson Roofing can be served by serving its registered agent Bill Johnson at 574 Youngblood Rd. Robinson TX. 76706.

4. Defendant Boen Plumbing is a Texas Corporation headquartered at 5720 Franklin Ave, P.O Box 21803, Waco TX 76702. Boen Plumbing may be served by serving its registered agent Stephanie Boen at 3339 Pioneer Circle Waco TX 76712.

## III.

### BACKGROUND

5. Zurich’s insured, WDS Construction, was the general contractor for a remodeling project at Richland Mall in Waco Texas regarding the addition of a Dick’s Sporting Goods store. WDS subcontracted with Johnson Roofing and Boen Plumbing in connection with the remodeling project.

6. Pursuant to Exhibit “A” to a Master Subcontract Agreement between Johnson Roofing and WDS dated 7/31/2017 Johnson Roofing was to obtain Commercial Liability Insurance naming WDS as an additional insured on a primary and noncontributory basis to cover any damages that may arise resulting from its work

on the project. A true and correct copy of the agreement with Johnson Roofing is attached hereto as Exhibit 1.

7. Pursuant to Exhibit "A" to a Master Subcontract Agreement between Boen Plumbing and WDS dated 7/11/2017 Boen Plumbing was to obtain Commercial Liability Insurance naming WDS as an additional insured on a primary and noncontributory basis to cover any damages that may arise resulting from your work on the project. Boen Plumbing was also required to fully indemnify and defend WDS for any damages caused by its work. A true and correct copy of the agreement with Boen Plumbing is attached hereto as Exhibit 2.

8. On October 22, 2017, the Waco TX area experienced very heavy rainfall. On that date Boen Plumbing cut a large drainage pipe and left it disconnected inside the Dick's Sporting Goods space allowing rainwater to come into the Mall and cause extensive damage. Johnson Roofing left an open hole in the roof inside the Dick's Sporting Goods space allowing rainwater to come into the Mall as well. Zurich paid \$79,325.21 for remediation work and lost revenue to mall tenants claimed by Richland Mall as a result of the water intrusion.

#### IV

#### CAUSES OF ACTION

##### Negligence

9. Defendants Johnson Roofing and Boen Plumbing owed a duty to exercise reasonable care in the performance of their work for WDS Construction on the Dick's Sporting Goods remodeling. Johnson Roofing breached that duty by failing to adequately secure the roof from storm water penetration. Boen Plumbing breached that duty by cutting a large roof drainage pipe and leaving it open in the Dick's Sporting Good space allowing heavy rainfall to discharge from the pipe into the Mall. The actions and omissions of Johnson Roofing and Boen Plumbing were the proximate cause of damages that WDS Construction's carrier Zurich was required to pay.

**Breach of contract**

10. Pursuant to the agreements attached hereto as Exhibit 1 and 2, Johnson Roofing and Boen Plumbing owed WDS Construction the obligation to indemnify for damages resulting from their work. Johnson Roofing and Boen Plumbing have breached the contracts by failing to reimburse WDS Construction via its carrier Zurich for the damages paid as a result of their work.

**Conditions Precedent**

11. All conditions precedent have been met. Defendant made timely demand on both Johnson Roofing and Boen Plumbing for reimbursement of the damages. Defendants have failed to make payment requiring Plaintiff to retain attorneys to bring this action.

V.

**PRAYER**

Wherefore, premises considered, Plaintiff prays that Defendants be cited to appear and answer in this case, and that upon final hearing the court award Plaintiff a judgment against Defendants for the following:

- a. an award of \$79,325.21 to Plaintiff in reimbursement of funds paid by Plaintiff on behalf of its insured WDS Construction in response to claims made by Richland Mall;
- c. Pre-judgment and post-judgment interest as provided by law;
- d. Attorney fees and Costs of Court that Plaintiff has incurred in asserting this subrogation action; and
- e. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Brittan L. Buchanan

Brittan L. Buchanan

State Bar No: 03285680

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